

**SUMMONS - CIVIL**

JD-CV-1 Rev. 4-16

C.G.S. §§ 51-346, 51-347, 51-349, 51-350, 52-45a,  
52-48, 52-259, P.B. §§ 3-1 through 3-21, 8-1, 10-13STATE OF CONNECTICUT  
**SUPERIOR COURT**  
www.jud.ct.gov**See other side for instructions**

- ☐ "X" if amount, legal interest or property in demand, not including interest and costs is less than \$2,500.
- ☐ "X" if amount, legal interest or property in demand, not including interest and costs is \$2,500 or more.
- ☒ "X" if claiming other relief in addition to or in lieu of money or damages.

TO: Any proper officer; BY AUTHORITY OF THE STATE OF CONNECTICUT, you are hereby commanded to make due and legal service of this Summons and attached Complaint.

Address of court clerk where writ and other papers shall be filed (Number, street, town and zip code) (C.G.S. §§ 51-346, 51-350) <b>123 Hoyt Street, Stamford, CT</b>		Telephone number of clerk (with area code) <b>( 203 ) 965 5308</b>	Return Date (Must be a Tuesday) <b>Jun 12, 2018</b> Month Day Year
<input checked="" type="checkbox"/> Judicial District <input type="checkbox"/> Housing Session	<input type="checkbox"/> G.A. Number: <b>Stamford</b>	At (Town in which writ is returnable) (C.G.S. §§ 51-346, 51-349) <b>Stamford</b>	
		Case type code (See list on page 2) Major: <b>A66</b> Minor:	

**For the Plaintiff(s) please enter the appearance of:**

Name and address of attorney, law firm or plaintiff if self-represented (Number, street, town and zip code) <b>Stephen E Nevas, 237 Post Road West, Westport, CT 06880</b>		Juris number (to be entered by attorney only) <b>306089</b>
Telephone number (with area code) <b>( 203 ) 557 8600</b>	Signature of Plaintiff (If self-represented) 	
The attorney or law firm appearing for the plaintiff, or the plaintiff if self-represented, agrees to accept papers (service) electronically in this case under Section 10-13 of the Connecticut Practice Book. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Email address for delivery of papers under Section 10-13 (if agreed to) <b>snevas@nevaslawgroup.com</b>

Number of Plaintiffs:      Number of Defendants:      ☒ Form JD-CV-2 attached for additional parties

Parties	Name (Last, First, Middle Initial) and Address of Each party (Number; Street; P.O. Box; Town; State; Zip; Country, if not USA)	
First Plaintiff	Name: <b>Dania Feller Anderson, 15 Richmond Hill Road, Weston, CT 06883</b> Address:	P-01
Additional Plaintiff	Name: <b>Sidney A. Dudash, 26 Lords Highway East, Weston, CT 06883</b> Address:	P-02
First Defendant	Name: <b>Town of Weston Conservation Commission, 56 Norfield Road, Weston, CT 06883</b> Address:	D-01
Additional Defendant	Name: Address:	D-02
Additional Defendant	Name: Address:	D-03
Additional Defendant	Name: Address:	D-04

**Notice to Each Defendant**

- 1. YOU ARE BEING SUED.** This paper is a Summons in a lawsuit. The complaint attached to these papers states the claims that each plaintiff is making against you in this lawsuit.
- To be notified of further proceedings, you or your attorney must file a form called an "Appearance" with the clerk of the above-named Court at the above Court address on or before the second day after the above Return Date. The Return Date is not a hearing date. You do not have to come to court on the Return Date unless you receive a separate notice telling you to come to court.
- If you or your attorney do not file a written "Appearance" form on time, a judgment may be entered against you by default. The "Appearance" form may be obtained at the Court address above or at [www.jud.ct.gov](http://www.jud.ct.gov) under "Court Forms."
- If you believe that you have insurance that may cover the claim that is being made against you in this lawsuit, you should immediately contact your insurance representative. Other action you may have to take is described in the Connecticut Practice Book which may be found in a superior court law library or on-line at [www.jud.ct.gov](http://www.jud.ct.gov) under "Court Rules."
- If you have questions about the Summons and Complaint, you should talk to an attorney quickly. **The Clerk of Court is not allowed to give advice on legal questions.**

Signed (Sign and "X" proper box) 	<input checked="" type="checkbox"/> Commissioner of the Superior Court <input type="checkbox"/> Assistant Clerk	Name of Person Signing at Left <b>Stephen E. Nevas</b>	Date signed <b>5/22/2018</b>
If this Summons is signed by a Clerk: a. The signing has been done so that the Plaintiff(s) will not be denied access to the courts. b. It is the responsibility of the Plaintiff(s) to see that service is made in the manner provided by law. c. The Clerk is not permitted to give any legal advice in connection with any lawsuit. d. The Clerk signing this Summons at the request of the Plaintiff(s) is not responsible in any way for any errors or omissions in the Summons, any allegations contained in the Complaint, or the service of the Summons or Complaint.			For Court Use Only File Date
I certify I have read and	Signed (Self-Represented Plaintiff)	Date	Docket Number

**CIVIL SUMMONS**  
**CONTINUATION OF PARTIES**  
JD-CV-2 Rev. 9-12

STATE OF CONNECTICUT  
**SUPERIOR COURT**

First named Plaintiff *(Last, First, Middle Initial)*

**Anderson, Dania F.**

First named Defendant *(Last, First, Middle Initial)*

**Town of Weston Conservation Commission**

**Additional Plaintiffs**

Name <i>(Last, First, Middle Initial, if individual)</i>	Address <i>(Number, Street, Town and Zip Code)</i>	CODE
Dudash, Joan 26 Lords Highway Eastm Weston, CT 06883		03
Welsh, Brian O. 22 Richmond Hill Road, Weston, CT 06883		04
Welsh, Carolyn L. 22 Richmond Hill Road, Weston, CT 06883		05
Welsh, Freda, 22 Richmond Hill Road, Weston, CT 06883		06
Savitsky, Dennis, 184 Davis Hill Road, Weston, CT 06883		07
		08
		09
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		11
		12
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**Additional Defendants**

Name <i>(Last, First, Middle Initial, if individual)</i>	Address <i>(Number, Street, Town and Zip Code)</i>	CODE
		05
		06
		07
		08
		09
		10
		11

	12	FOR COURT USE ONLY - File Date   Docket number _____
	13	
	14	

DOCKET NO.	:	RETURN DATE: JUNE 12, 2018
DANIA FELLER ANDERSON	:	JUDICIAL DISTRICT OF
SIDNEY A. DUDASH	:	
JOAN DUDASH	:	STAMFORD/NORWALK
BRIAN O. WELSH	:	AT STAMFORD
CAROLYN L. WELSH	:	
FREDA WELSH	:	
DENNIS SAVITSKY, et al	:	
<i>plaintiff intervenors</i>	:	
v.	:	
CONSERVATION COMMISSION OF	:	
THE TOWN OF WESTON	:	
<i>defendant</i>	:	MAY 22, 2018

**APPEAL FROM THE DECISION OF THE  
CONSERVATION COMMISSION  
OF THE TOWN OF WESTON**

**Re: Application of the Town of Weston, Moore Property  
Map 17, Block 1, Lot 27, Lords Highway East  
Proposed Dog Park**

Come, Dania Feller Anderson, Sidney A. Dudash, Joan Dudash, Brian O. Welsh, Carolyn L. Welsh, Freda Welsh, and Dennis Savitsky. who, pursuant to C.G.S. § 22a-43, hereby appeal the decision of the Conservation Commission (“Commission”) of the Town of Weston on May 3, 2018, to approve the Application of the Town of Weston to construct an approximately 1,280-foot roadway, 22-vehicle parking lot, 80-foot turnaround and 3.5-acre dog park on a 36.17-acre parcel of undeveloped Town-owned land bordered by Lords Highway East and Davis Hill Road, Weston, Connecticut. Plaintiffs, on February 20, 2018, intervened before the Commission by verified Notice of Intervention pursuant to C.G.S. § 22a-19 in the Commission’s proceeding,



and alleged that the Applicant proposes a regulated activity that “involves conduct which has, or which is reasonably likely to have the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state.”

## **I. Procedural History**

1. On January 23, 2018 the Town of Weston submitted an Application to the Weston Conservation Commission to construct a 1,280-foot road, 22 parking spaces and, turnaround on a 36.17-acre parcel of Town-owned land in order to provide access to a proposed 3.5-acre wooded dog park on property bounded by Lords Highway East and Davis Hill Road in Weston.
2. On February 6, 2018 thirty-six (36) Weston residents submitted Petitions for a Public Hearing on the Town’s Application to the Conservation Commission pursuant to Section 215-9A (1)(b) of its Regulations. It was granted by the Commission.
3. On February 20, 2018 the plaintiff-intervenors filed a verified Notice of Intervention with the Commission that the Application proposes a regulated activity that, pursuant to C.G.S. § 22a-19, “involves conduct which has, or which is reasonably likely to have the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state.”
4. The first of two public hearings, at which plaintiffs appeared personally and through counsel, occurred on February 22, 2018.
5. The Commission conducted a second public hearing on April 26, 2018, prior to which plaintiffs filed a Supplemental Memorandum to their Notice of Intervention.

6. The Commission conducted a work session on May 3, 2018 at which it approved the Town's Application. The decision of the Commission, from which the Intervenors hereby appeal, was published on May 10, 2018.

## **II. Aggrievement**

Plaintiffs, by the filing of their Notice of Intervention and Supplemental Memorandum and, active participation in the Commission's proceedings, are statutorily aggrieved by the Commission's decision. *Finley v. Inland Wetlands Commission of the Town of Orange*, 289 Conn. 12, 25-33 (2008). They are accordingly entitled to prosecute this appeal pursuant to C.G.S. § 22a-43.<sup>1</sup>

## **III. Background**

Two separate and distinct issues were presented by defendant's Application and were considered but are only decided in part by the Commission.

The first is whether there is substantial evidence to support the Commission's approval of the site of the proposed dog park site on steep slopes immediately above and adjacent to wetlands suspected to contain a vernal pool. Plaintiffs allege that the Commission improperly approved the Application both because, in doing so, it violated its own Regulations and further, the record fails to contain substantial evidence or any relevant testimony whatsoever to support its decision.

The second issue arises because, while the Commission was presented with and did not question substantial visual evidence and sworn statements that storm and ground water runoff

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<sup>1</sup> "This court has repeatedly held that a person who intervenes in an administrative proceeding pursuant to § 22a-19 and who is aggrieved by the agency's decision is entitled to appeal from that decision pursuant to the statutory provisions governing appeals from the decisions of that particular agency."

from the Applicant's property regularly flood adjacent and down gradient properties, Applicant's plan to manage additional storm water runoff to result from the proposed activity, is not based on current or accurate measurements of the water table and is thereby destined to fail.

#### **IV. REASONS FOR APPEAL**

Plaintiffs allege that the decision of the Commission is illegal, arbitrary, capricious, is not based on substantial evidence. They appeal from the Commission's decision as follows:

##### **COUNT ONE**

##### **The Commission Acted in Material Violation of Its Own Regulations.**

1. The Commission approved the construction of a dog park on a 3.5-acre section of the property sited on a steep, wooded, hillside, immediately above extensive wetlands, some of which are suspected to contain vernal pools.
2. The Commission violated its own Regulations by failing to require the Applicant to "inventory and maintain current records of all regulated areas within the Town," specifically wetlands on the Applicant's property, as required by § 215-3, C of its Regulations.
3. The Commission violated its own Regulations by failing to require the Applicant, despite a written request by plaintiffs which the Commission rejected, to identify and delineate the topography of steep slopes and fully identify the boundaries of wetlands that include a suspected vernal pool within an acknowledged Upland Review Area adjacent to the dog park as required by § 215-7, A, C (4) and C (7) of its Regulations.

4. The Commission violated its own Regulations by failing to require the Applicant to provide, as part of its written application, "Alternatives which would cause less or no environmental impact to wetlands and watercourses considered by the applicant . . .," mandated by § 215-7, C (6) of the Commission's Regulations.

#### COUNT TWO

The Commission Denied Intervenor's and the Public Fundamental Fairness and Due Process By, In Addition to Approving Applicant's Plans, On Its Own Initiative, Proposed and Approved Three Alternatives to the Applicant's Plan After the Record Was Closed Without Adequate Engineering, Environmental Data or Notice and Opportunity for Plaintiffs to Assess and Respond to Them.

5. As discussed at Par. 4 above, the Commission violated its own Regulations when it failed to require the Applicant to, with its Application, submit "Alternatives which would cause less or no environmental impact to wetlands and watercourses considered by the applicant . . ." as mandated by § 215-7, C (6) of the Commission's own Regulations.
6. In approving a permit for the plan submitted by the Applicant following closure of its record the Commission, on its own initiative, approved 'at the Applicant's discretion, moving the dog park to any of three other locations on the property.'<sup>2</sup>
7. Locations A and B are immediately adjacent to and abut the separate property of intervenors Sidney and Joan Dudash and, Carolyn, Freda, and Brian Welsh.

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<sup>2</sup> "The Commission will also approve, at the Town's discretion, moving the dog park to alternate locations for the chain link fencing for the dog park, to the west of the driveway shown on the plan or closer to Lords Highway East, shown on the Map as location A and location B."



8. No intervenor or member of the public was given notice or a reasonable opportunity to present engineering or environmental responses to the alternate locations approved by the Commission.
9. Intervenors thereby claim that the Commission thereby denied them fundamental fairness and due process.

### COUNT THREE

The Commission Failed to Base Approval of the 3.5-Acre Dog Park Site on Substantial Evidence or Any Relevant Expert Testimony Whatsoever.

10. Plaintiffs provided the Commission with detailed, written, expert evidence and testimony, based on repeated site visits by a respected soil scientist, together with photographic and video evidence of scouring and erosion in an Upland Review Area containing the dog park and steep slopes immediately above and adjacent to wetlands that make it reasonably likely if not certain that residue of dog urine and feces will be carried into and unreasonably pollute the wetlands.
11. The Commission erroneously demanded strict proof of this claim and failed to take plaintiff's expert evidence and testimony into account.
12. Applicant offered no site-specific evidence and the Commission required no expert evidence or testimony that unreasonable pollution is not reasonably likely to or will not occur.
13. In its effort to support a claim that dog urine and feces would not pose an environmental threat to the wetlands, the Applicant submitted, and the Commission relied upon unsubstantiated and isolated, out-of-context quotations on matters of expert opinion



from persons who did not visit and were not familiar with the property, did not appear before the Commission, whose credentials could not be verified and, who were unavailable for cross examination.

14. Substantial evidence does not exist in the record as a whole to support the Commission's decision.

15. Approval of the 3.5-acre dog park was therefore not based on substantial evidence.

#### COUNT FOUR

The Commission's Approval of Applicant's Plan and Three Alternates Without Deciding If the Applicant Will Cause Additional Flooding of Adjacent and Downgradient Properties Failed to Consider or Address Substantial Evidence That Additional Flooding Will Occur.

16. Intervenors submitted detailed photographic and video evidence and sworn statements, unchallenged by Applicant's evidence, that storm and ground water runoff from Applicant's property regularly causes unacceptable flooding of adjacent and downgradient properties.


17. Intervenors submitted substantial expert evidence that the proposed activity does and will cause additional storm water runoff and flooding.


18. Applicant acknowledged that its proposed activity will generate more storm water runoff by proposing measures to contain it.

19. Intervenors submitted specific expert evidence that Applicant's proposed storm water management plan is based on incorrect measurement of the height of what is a "perched" water table, close to the surface.

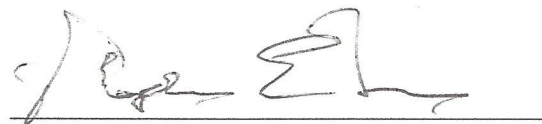
20. Intervenors submitted separate expert reports and testimony of a soil scientist and engineer that Applicant's erroneous measurement of the water table, made prior to the date of its Application, will cause Applicant's design to fail.

21. The Commission did not express awareness of or interest in Intervenor's evidence of the height of the water table.
22. The Commission's approval of the Application fails to address Applicant's plan to manage additional storm water runoff from the proposed activity or Intervenor's evidence that it will fail and result in additional flooding of adjacent and downgradient properties.
23. Substantial evidence does not exist in the record as a whole to support the Commission's decision by which it has provided the Applicant with four alternatives, three of which Applicant did not specifically request.

  
\_\_\_\_\_  
Sidney A. Dudash

  
\_\_\_\_\_  
Joan Dudash

Subscribed and sworn before me this 22<sup>nd</sup> day of May, 2018.

  
\_\_\_\_\_  
Stephen E. Nevas  
Commissioner, Superior Court

WHEREFORE, for each of the foregoing reason, plaintiff-intervenors request that this court reverse the decision of the Conservation Commission of the Town of Weston.

PLAINTIFF-INTERVENORS  
DANIA FELLER ANDERSON  
SIDNEY A. DUDASH  
JOAN DUDASH  
BRIAN O. WELSH  
CAROLYN L. WELSH  
FREDA WELSH  
DENNIS SAVITSKY, et al

By: 

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